IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

L.Rs. of Magna vs. Aamr Chand & ors.

S.B. Civil Second Appeal No.12/1986 against the judgment and decree dated 11.11.1985 passed by the learned Additional District Judge, Rajsamand in Civil Appeal No.46/1980.

Date of Judgment: March 24, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Mr. Manish Shishodia and Mr.Mohd. Aslam,for the appellants.
Ms. Rekha Borana, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

This second appeal is against the judgment and decree passed by the trial court dated 15.11.1976 in Civil Original Suit No.329/1969 by which the trial court decreed the suit of the plaintiffs for specific performance of the contract and against the appellate judgment and decree dated 11.11.1985 in Civil First Appeal No.46/1980 by which the appellate court partly allowed the appeal and though upheld the decree for specific performance of the contract but set aside the decree for possession on the ground that since the land is agricultural, therefore, decree for possession can be granted only by Revenue Court. The respondent-plaintiffs also submitted cross objection against decree as modified by the first appellate court denying the relief of possession in a suit of specific performance of the contract despite decreeing the suit for specific performance of the contract.

Brief facts of the case are that the defendant-appellant agreed to sell the agricultural land bearing *Khasra* No.558, 559 and 560 having measurements 6 bighas 3 biswas, 6 bighas 16 biswas, 6 bighas 14 biswas. The defendant-appellant also gave neighbourhood of the said property. The property was sold for a consideration of Rs.1000/- and its sale deed was executed in favour of the plaintiffs on 20.10.1968 and possession was also delivered to the plaintiffs on the same day. According to the plaintiffs, the defendant received the entire sale consideration and executed sale-deed but he did not get the sale-deed registered and since the time passed, therefore, the plaintiffs on 8.8.1969 went to the house of the defendant where the defendant misled the plaintiffs by saying that since time has expired for the registration of the document, therefore, a new deed will be executed by the defendant. On this pretext the defendant took the sale-deed dated 20.10.1968 and the receipt of Rs.1000/-from the plaintiffs and the defendant thereafter refused to execute the sale-deed. The plaintiff no.1 immediately instituted Criminal Case No.305/1969. Said documents were recovered from the defendant. The defendant thereafter filed the present suit for specific performance of the contract on 23.12.1969. It is alleged by the plaintiffs that immediately after taking possession of the suit property, the plaintiffs improved the land and started taking crops and he invested about Rs.5000/-. In above facts and circumstances, the plaintiffs filed the suit for specific performance of the contract.

The defendant submitted written statement and denied any

agreement between the parties and also denied handing over possession of the suit property to the plaintiffs. However, he admitted that the criminal case is pending. After pleading so, the defendant, after denying the facts as stated in para no.7 of the plaint, further submitted that the deed dated 20.10.1968 is not in relation to the land shown by the plaintiffs in the schedule annexed with the plaint. In additional pleas, only it is stated that suit has been filed to harass the defendant and the defendant is cultivating the land.

It appears that during the pendency of the suit, the defendant initiated proceedings under Section 145, Cr.P.C. wherein the land in question was attached under Section 146, Cr.P.C. The plaintiffs, therefore, amended the suit and sought relief for possession also. The trial court framed issue with respect to the execution of the sale-deed dated 20.10.1968 by the defendant in favour of the plaintiffs, about agreement for sale of the said property and with respect to handing over possession of the suit property to the plaintiffs after taking sale consideration by the defendant. On the basis of the plea taken by the plaintiffs themselves, an issue was framed whether the defendant by misleading the plaintiffs, took away the sale deed dated 20.10.1968 and receipt from the plaintiffs and whether the plaintiffs incurred expenditure of Rs.5000/- to improve the land.

The plaintiffs produced six witnesses and gave his own statement and also produced the said sale-deed dated 20.10.1968 and the receipt Ex.2. The defendant also produced six witnesses and also gave his own

statement. The defendant also produced copy of the judgment of criminal case and revenue receipt of the land in question Ex.A.2 and Ex.A.3.

The trial court after considering the evidence and the documents as well as surrounding circumstances, held that the defendant executed sale-deed dated 20.10.1968 and the receipt for Rs.1000/- on the same date. The trial court also held that the possession of the suit property was delivered to the plaintiffs. It appears that the defendant took a different stand in their evidence. The defendant in his evidence submitted that in fact one property of the defendant was mortgaged with one Sawai Ram and to get the possession from Sawai Ram,a deed was executed by defendant in favour of the plaintiffs on 20.10.1968 but that land is different land. Said statement of the defendant was of no relevance because of the simple reason that that was not the case set up by him in his written statement.

Firstly the trial court dismissed the suit of the plaintiffs by judgment and decree dated 15.11.1976. The defendant preferred appeal. Before the appellate court, the defendant submitted an application under Section 6 Rule 17,C.P.C. to meet with the objection of the plaintiffs about lack of pleading about the mortgage of the some land of the defendant to Sawai Ram and explanation for executing the deed dated 20.10.1968. The said application of the defendant was dismissed by the first appellate court on 24.11.1983. However, the first appellate court, allowed the defendant's application under Order 41 Rule

27, C.P.C. as the defendant present appellant, submitted application stating therein that the land in question for which the decree has been sought by the plaintiffs is the recorded government land. The defendant, in support of his said plea sought permission to produce the copy of the J*amabandi* of the land in question. According to the defendant, in view of the above facts, the suit of the plaintiffs was liable to be dismissed. After order dated 6.1.1979 allowing the application under Section 41 Rule 27,C.P.C., the matter was remitted to the trial court for recording the evidence. The appellate court after hearing the parties, by judgment and decree dated 11.11.1985 upheld the decree for specific performance of the contract but modified the decree and set aside the decree for possession on the ground that the land in question is agricultural land, therefore, only the revenue court can grant decree for possession of the agricultural land. The defendant appellant has preferred this second appeal to challenge the judgment and decree of the two courts below by which suit for specific performance has been decreed whereas the plaintiffs submitted cross-objection against denial of consequential relief of possession by the first appellate court.

While admitting this appeal on 28.7.1986, following substantial questions of law were framed by this Court:-

"*(i) Whether the learned lower courts are right in passing a decree for specific performance of the contract inspite of the plaintiff's latches and failure to present the document for registration ?*

(ii) Whether the suit for specific performance of contract as

framed is maintainable on the basis of executed agreement Ex.1 ?

(iii) Whether the earlier agreement stood novated and the plaintiff has failed to prove any new agreement which could be specifically enforced ?

(iv) Whether the learned lower Court was right in refusing to consider the evidence already on record and further refusing to allow amendment application filed by the defendant in the appellate court ?

(v) Whether the learned lower Court is right in refusing to consider the question of the land being Swai Chuk land and the agreement being void inspite of the fact that defendant's application for amendment has been rejected as being unnecessary in view of the evidence already recorded ?

(vi) Whether the learned lower Court is right in granting a decree for specific performance though in fact the equitable relief of specific performance should have been refused to the plaintiff ?

(vii) Whether the learned lower Court is right in holding that compensation is not adequate relief to the plaintiff?

(viii) Whether the learned lower Court is right in decreeing the plaintiffs suit inspite of the total failure of the plaintiff to plead and prove readiness and willingness to perform the part of his contract ?

(ix) Whether the learned lower Court is right in refusing to consider the question of cancellation of the document by the plaintiffs themselves inspite of the plaintiffs clear admission ?

The learned counsel for the appellant vehemently submitted that the suit of the plaintiffs itself was not maintainable in view of the fact that if the stand taken by the plaintiffs is looked into, the plaintiffs though purchased the land in question from the defendant and they got the possession of the property, they obtained the sale-deed from the defendant, then it was their duty to get the sale-deed registered. Since the sale-deed was executed by the defendant then there was no

contract for sale which could have been enforced through the court of law. It is also submitted that the plaintiffs failed to give any explanation why he kept the sale-deed with him for such a long period and allowed to expire the period for presentation of the document before the registering authority, which is four months from the date of execution of the document as provided by Section 23 of the Registration Act, 1908. Apart from it, the plaintiffs have not pleaded that they were ready and willing to perform their part of the contract, therefore, the suit of the plaintiffs is barred under Section 16(c) of the Specific Relief Act, 1963. In support of this plea, the learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court delivered in the case of Pukhraj D. Jain and others vs. G.Gopal Krishna ((2004) 7 SCC 251) and the judgment of this Court delivered in the case of Udai Chand vs. learned counsel for the L.Rs. of Late Shri Basti Mal (2000 DNJ (Raj.) 401), wherein a suit was filed for getting the registration of the sale-deed and this Court held that the plaintiff insisted first to get a clearance certificate from the Municipality and that was not condition of sale as it was not found mandatory condition, therefore, this Court held that dismissal of the suit by the court was right as plaintiff himself avoided the registration of the document. The learned counsel for the appellant also tried to submit that the land description given by the plaintiffs is different than for which the decree is sought.

The learned counsel for the respondents vehemently submitted that the pleas which the defendant wants to raise before this Court in

this second appeal, are not coming from the defence taken by the defendant. It is also submitted that the substantial questions of law were framed by this Court but they do not arise in this appeal. The learned counsel for the respondents pointed out that the plea was taken that the land in question is Swai Chuk (government land) and, therefore, the agreement is void and the defendant's application for amendment was wrongly rejected. Whereas in a suit for specific performance of the contract, the question of title of the proposed property to be sold is irrelevant. It is also submitted that in a suit for specific performance of the contract, the decree is granted for performance of the contract irrespective of the fact whether in fact the purchaser will get property or not. This is in consonance with the settled proposition that the buyer should be aware while purchasing the property. It is also submitted that the substantial question of law framed that whether in the facts and circumstances, the compensation is not adequate relief to the plaintiffs, whereas this issue depends upon the facts of the case, whereas in the present case, there is not even foundation laid down by the defendant for such purpose, as it was never the plea of the defendant. The learned counsel for the respondents also tried to submit about all other substantial questions of law framed in the appeal.

I considered the submissions of the learned counsel for the parties and perused the record also.

So far as question of facts with respect to the transaction between the plaintiffs and the defendant is concerned, there is a

concurrent finding of fact in favour of the plaintiffs as the two courts below held that the defendant agreed to sell the property in dispute to the plaintiffs and executed the sale-deed dated 20.10.1968 and one receipt evidencing the receipt of the entire sale consideration from the plaintiffs. This finding has not been vitiated because of any error of law or because of any lawful reason. In fact after going through the entire record, this Court is of the view that the defendant himself executed the deed dated 20.10.1968. He initially denied the execution of the said deed dated 20.10.1968 but subsequently he admitted that the deed was executed by him, however, with different story. The story set up by the defendant after denying the entire deal with the plaintiffs is that in fact the said deed was executed and receipt was also signed by him but it was with the object to take possession of some other land from one Sawai Ram who was mortgagee in possession in the defendant's different land. Therefore, so far as admission of signing the document and delivery of it to the plaintiffs is concerned, the defendant-appellant cannot take contrary stand. So far as about different story and explaining the situation in which the document dated 20.10.1968 and receipt was executed by the defendant, was taken for the first time in evidence before the trial court. The said evidence was without any pleadings. The defendant tried to improve his case by moving an application for amendment of the written statement before the first appellate court after dismissal of his suit in the year 1976. By the said application, the defendant wanted to virtually withdraw his admission,

though his admission was in negative form of not executing the deed. The subsequent plea sought to be put on record with respect to execution of the document by the defendant in favour of the plaintiffs, is an admitted fact by the defendant, therefore, the plaintiffs can certainly rely upon this admission of the defendant even when initially the defendant denied the execution of the deed. So far as the case set up by the defendant that the document was executed for getting the mortgagee in possession ousted is concerned, that on the face of it appears to be false, because there is no explanation how the execution of document in favour of the plaintiffs could have helped the defendant from ousting the alleged mortgagee from the plaintiffs' property. Not only this, there is no explanation why the same facts were not pleaded by the defendant in his written statement. In view of the above the first appellate court was right in dismissing the defendant's amendment application.

Now I take up substantial questions of law as framed by this Court.

(1) The substantial question of law no.1 is whether the learned lower courts are right in passing a decree for specific performance of the contract inspite of the plaintiff's latches and failure to present the document for registration ?

It is alleged that the sale-deed was executed by the defendant but the plaintiffs kept the sale-deed beyond the period of four months with them and allowed the time for getting the sale-deed registered

expired. The plaintiffs should have served notice upon the defendant for presentation of the document for registration and for admission of the execution of the document before the registering authority and thereafter they could have filed the suit for getting the sale-deed registered from defendant. Since the plaintiffs have not done so, therefore, the plaintiffs' suit should have been dismissed on the ground of laches and inaction on the part of the plaintiffs.

At the outset, it may be stated that the defence which are now taken were not the defence before the courts below. The laches on the part of the plaintiffs and failure to present the document for registration, otherwise also has no application to the facts of the present case. In this case, the entire sale consideration was paid to the seller. The seller gave due receipt of receiving the sale consideration. The seller executed sale-deed. The mere non-presentation of document for registration for long period, cannot be a ground for denial of relief in such circumstances because by that the purchaser has discharged all his obligations for purchasing the property and the seller alone has not performed his part of the contract. It was not the condition or obligation upon the plaintiffs to present the document for registration. Section 32 of the Registration Act, 1908 provides that the document for registration except as provided under Section 31, 88 and 89 shall be presented by the person executing document or his representative or person claiming through him. In the above facts, the plaintiffs performed their part of the contract and discharged their all obligations under the contract. In

addition to above, it cannot be ignored that the plaintiffs pleaded that the defendant did not get the document registered and the plaintiff no.1 himself went to the residence of the defendant on 8.8.1969. That fact shows that the plaintiffs, after some time only, made positive effort for getting the document registered. This short period of 10 months even if remained unexplained, cannot be a ground to deny the relief of specific performance of the contract in the peculiar facts of the case, where the entire sale consideration has been paid and possession has been taken over by the purchaser, therefore, substantial question of law no.1 is decided against the defendant-appellant and it is held that there was no laches on the part of the plaintiffs nor it was fault of the plaintiffs in presentation of sale-deed for getting its registration.

(2) The substantial question of law no.2 is that whether the suit for specific performance of contract as framed is maintainable on the basis of executed agreement Ex.1 ?

It is true that the sale-deed was executed by the defendant in favour of the plaintiffs but that evidences only a concluded contract. Section 55(1)(d) of the Transfer of Property Act, 1882 provides that the seller is bound on payment of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place. Therefore, after execution of the deed, may it be agreement for sale or sale-deed itself, if the purchaser tenders the amount if due to the seller, the seller is bound to execute the conveyance of the property unless there is

lawful reason for not doing so. If consideration has already been paid to the seller and the purchaser has been put in possession by the seller and the seller has executed the sale-deed in favour of purchaser, ordinarily relief directing the defendant to get the sale-deed registered cannot be denied on the ground of delay or laches. The vendor may have very many rights including the right to rescind the contract for sale but once sale-deed itself has been executed by the seller, the seller cannot deny the execution of the sale-deed, on the request for execution of the proper conveyance by the purchaser. This obligation of execution of proper conveyance of the property is a statutory obligation of the seller. This condition even if not incorporated in the executed sale-deed, still the relief can be claimed and granted to the prospective purchaser whose title has not perfected because of non-registration of the sale-deed by taking help of Section 55(1)(d) of the Transfer of Property Act. In view of the above, the readiness and willingness to perform his (purchaser's) part of the contract is concerned, required to be appreciated in such circumstances, in favour of person seeking title by sale. Technicalities of law can be avoided so as to grant relief in favour of such persons who bonafidely purchased the property, paid the price and obtained the possession as well as proper deed but because of any reason failed to get the document registered. That will be further in consonance of Section 53A of the Transfer of Property Act, which is principle of part performance of the contract, on the basis of which the efforts to oust the buyer by the true owner of the property can be

resisted by the person in possession who came in possession of the property in part performance of the contract, obviously falling in Section 53A of the Transfer of Property Act.

Proviso to Section 49 of the Registration Act,1908 also supplements the principle of giving protection to the person in possession who came in possession in part performance of the contract. The proviso to Section 49 provides that an unregistered document affecting immovable property which is required to be registered by the Registration Act or by the Transfer of Property Act,such document shall be admissible in evidence in a suit for specific performance of the contract under Chapter II of the Specific Relief Act, 1877 and also as evidence of part performance of a contract for the purpose of section 53A of the Transfer of Property Act, 1882. The document dated 20.10.1968 written as sale-deed with intention to affect the immovable property and for the purpose of conveying the title to the plaintiffs, since has not in fact affected the property involved as it is prohibited by sub-clause (a) of Section 49 of the Registration Act, therefore, this document can be treated to be a document, the contract for sale of the property between the contracting parties and for the collateral purpose, it has been made admissible in evidence under proviso to Section 49. On proving execution of sale-deed by one person in favour of another person, the parties seeking to prove contract for sale also, otherwise the sale-deed itself cannot be executed without there being any intention of sale by one person and intention to purchase by other. Therefore, the

suit for specific performance of the contract on the basis of Ex.1 dated 20.10.1968 was maintainable and was rightly decreed by the trial court.

(3) The substantial question of law no.3 is whether the earlier agreement stood novated and the plaintiffs have failed to prove any new agreement which could be specifically enforced ?

The plaintiffs sought relief so that they may get the title of the property which was sold to them by the defendant. The plaintiffs came with positive case that the defendant by misleading and fraudulently obtained the said sale-deed and the receipt from him and those were cancelled. It was never the case of the defendant that earlier agreement was cancelled or new contract was entered into between the parties. Proviso to Section 49 of the Registration Act recognized unregistered sale-deed as agreement to sell, therefore, the suit for specific performance of contract on the basis of unregistered sale-deed is also maintainable. Since in this case allegation of plaintiffs is that the defendant by deceitful means obtained the sale-deed from the plaintiffs and subsequently put endorsement of cancellation over it, therefore, in the facts of this case the plaintiffs could have filed only suit for specific performance of the contract for getting proper registered sale-deed from the vendor.

So far as the contention of the learned counsel for the appellant that the plaintiffs pleaded that plaintiff no.1 himself went to the residence of the defendant and there the defendant agreed that he will execute a new document and that is a novation of the contract and in

view of novation of contract, the earlier contract dated 20.10.1968 cannot be enforced. The argument has been advanced without noticing this fact that the plaintiffs' plea was not of the novation of contract but the plea is that the defendant by deceitful means took sale-deed from the plaintiffs and cancelled the deed. Wrongful act of defendant is not a contract for sale nor is a novation of contract. The novation of the contract can be with the consent of the two parties and it cannot be unilateral. In this case, the plea how the fraud was committed by the plaintiffs is projected as novation of contract. Such plea is not finding support from any stretch of imagination.

(4) The substantial questions of law no.4 and 5 are whether the learned lower Court was right in refusing to consider the evidence already on record and further refusing to allow amendment application filed by the defendant in the appellate court ? and whether the learned lower Court is right in refusing to consider the question of the land being Swai Chuk land and the agreement being void inspite of the fact that defendant's application for amendment has been rejected as being unnecessary in view of the evidence already recorded ?

Since the order of the rejection of the amendment application by the first appellate court has been dealt with in earlier part of this judgment, therefore, question no.4 is decided against the appellant and the first appellate court rightly dismissed the defendant's application and in the same way the question of land being Swi chuk (government land) also has been considered in the preceding paras and in view of the

reasons given above, the substantial question of law no.5 is also decided against the appellant.

(5) Substantial questions of law no.6 and 7 which are whether the learned lower Court is right in granting a decree for specific performance though in fact the equitable relief of specific performance should have been refused to the plaintiffs ? and whether the learned lower Court is right in holding that compensation is not adequate relief to the plaintiffs ?, also required to be decided against the appellant-defendant vendor in view of the fact that in the facts of this case, particularly, all payments of the entire sale consideration and delivery of the possession of the seller and sale-deed in fact has been executed by the vendor in favour of the plaintiffs only perfecting of title upon plaintiffs cannot be refused. The defendant fraudulently obtained the unregistered sale-deed from the plaintiffs, the plaintiffs lodged the criminal case, all equities are in favour of the plaintiffs and there could not have been any reason for denying the specific performance of the contract. At this stage, the learned counsel for the respondents-plaintiffs submitted that the plaintiffs' witness D.W.5 categorically admitted that after the sale, the plaintiffs were in possession and they took at least five crops. It is also submitted that thereafter the land was attached as the proceeding under Section 145, Cr.P.C. was initiated by the defendant to oust the plaintiffs but the plaintiffs in auction, took the land in the proceeding under Section 145,Cr.P.C.

In view of the above, it will be inequitable if the relief of specific

performance of the contract is denied to the plaintiffs and compensation alone is awarded to the plaintiffs.

(6) Substantial question of law no.8 is whether the learned lower Court is right in decreeing the plaintiffs suit inspite of the total failure of the plaintiff to plead and prove readiness and willingness to perform the part of his contract ?

More emphasis of the learned counsel for the appellant was on this question because of the reason that now it is settled law that a decree for specific performance of the contract can be granted only if the plaintiffs pleaded and proved their readiness and willingness to perform their part of the contract and the learned counsel for the appellant relied upon the two judgments referred above. It is true that the law is very clear on this point and the plaintiffs are required to prove readiness and willingness to perform their part of the contract. In this case, the plaintiffs discharged all of their obligations under agreement. The purchaser's duty was to pay the sale consideration to the seller and to obtain actual physical possession of the subject matter of the same and enjoyed it. The duty was to get the proper deed with him evidencing that the seller in fact sold the property. The plaintiffs in this case obtained the sale-deed itself from the defendant. The obligation was of the defendant only to discharge his duty as provided under sub-clause (d) of sub-section (1) of Section 55 of the Transfer of Property Act. Therefore, in above facts and circumstances, even if there is no proper pleading even then denying relief to the plaintiffs will be

obviously inequitable also and worst will be to give benefit to that person who received sale consideration, parted with possession of the property, signed the proper sale-deed but did not get it registered and further fraudulently obtained the sale-deed from the plaintiffs. The equitable relief required to be equitable in fact and denying equitable relief to a just person, coupled with giving undue advantage to the wrong person cannot be a just and judicial decision in a court of law. In this case, the plaintiffs' conduct also clearly indicates that the plaintiffs themselves went to the defendant for obtaining the registration of the document. The fact which cannot be ignored is that the defendant never took a plea before the trial court that there is lack of pleading. Had there been any objection about lack of pleading, the plaintiffs would have corrected it by incorporating exact required phraseology. The facts of the case relied upon by the learned counsel for the appellant in the case of Pukhraj D. Jain (supra) are entirely different. In that case, none else than the purchaser himself sent a legal notice rescinding the contract and thereafter filed the suit claiming refund of the advance paid by him and obtained the decree for refund of the amount. In that fact situation, Hon'ble the Apex Court held that in such circumstances, it is absolutely apparent that respondent no.1 was not ready and willing to perform his part of the contract and in view of the mandatory provisions of Section 16 of the Specific Relief Act, 1963, no decree for specific performance of the contract could be passed. In the case of Udai Chand (supra), the insistence of the plaintiff for obtaining the clearance

certificate from the Municipality by the seller despite the fact that that was not the mandatory condition, was found to be one of the factor against the plaintiff and in the facts of the case, this Court held that the plaintiff himself avoided the registration. Therefore, the suit was dismissed.

In view of the above, the plaintiffs were in fact ready and willing to perform their part of the contract and not only that but they performed the entire part of the contract. Therefore, substantial question of law no.8 is also decided against the appellant.

(7) The substantial question no.9 is that whether the learned lower Court is right in refusing to consider the question of cancellation of the document by the plaintiffs themselves inspite of the plaintiffs clear admission ?

The plaintiffs' case was that the defendant got the unregistered sale-deed from the plaintiffs and cancelled by deceitful means. Therefore, the admission of the plaintiffs about cancellation of the sale-deed has been sought bereft of the facts of the case.

So far as cross-objection filed by the plaintiffs-respondents against part of the judgment and decree of the first appellate court by which the first appellate court set aside the decree for possession of the suit property granted by the trial court is concerned, the cross objection deserves to be allowed because of simple reason that the jurisdiction of the court in the matter of suit for specific performance of the contract is in civil courts. The purchaser becomes owner/khatedar tenant of the

land in question when he gets the proper deed of conveyance registered in his favour. The Specific Relief Act itself provides that the court in a suit for specific performance of the contract can grant the decree for possession, obviously a consequential relief. When initially jurisdiction is in the civil court for entertaining suit for main relief, the party cannot ask to obtain consequential relief from another. Otherwise also, the possession has not been sought by virtue of any legal right created by the Rajasthan Tenancy Act for which the suit can be filed in revenue court.

It will be further relevant to mention here that in this case, the plaintiffs claimed that they are in possession of the suit property since its purchase in the year 1968 and even when the proceedings were initiated under Section 145, Cr.P.C. The plaintiffs took possession of the suit property by giving bid and the plaintiffs are in possession of the land in dispute, therefore, the relief of possession in the present case is not appropriate relief and it is declared that the plaintiffs are entitled to retain the possession of the land in dispute, effect of which will be end of the proceedings under Section 145, Cr.P.C., if said proceeding is pending and possession of the plaintiffs over the land in dispute is declared lawful.

In sum and substance the appeal preferred by the appellant is dismissed. The decree of the trial court is restored and the cross objection is allowed in the light of the observations made above.

mlt. (**PRAKASH TATIA),J.**